

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION AT CLEVELAND

CITY OF CLEVELAND,

Plaintiff,

v.

SHAKER HEIGHTS APARTMENTS
OWNER, LLC, *et al.*,

Defendants.

Case No.: 1:23-cv-00617-CEF

JUDGE CHARLES ESQUE FLEMING

**REMOVAL DEFENDANTS' JOINT
MOTION FOR REALIGNMENT OF
PARTIES**

Now come Defendants Shaker Heights Apartments Owner, LLC, Shaker Heights Member, LLC, Michael Chetrit, Danielle Holifield aka Danielle Nickerson, E&M Management, LLC, Eli Weiss aka Eliezer Weiss, Mordecai Weiss AKA Morty Weiss and Yaacov Amar (collectively "Removal Defendants"), by and through counsel and respectfully request this Court to realign Marbelle Industries, Inc. B&H Coin Laundry Service, Brent Delewski, K Kern Painting, LLC, AAA Staffing, LLC, Cuyahoga County Treasurer, State of Ohio Department of Taxation, Attorney General of The State of Ohio, Ohio Bureau of Workers Compensation and Ohio Department of Job & Family Services (collectively "Nominal Parties"), as Plaintiff's or nominal parties to be disregarded for the purposes of determining diversity.

As explained in Removal Defendants' Memorandum in Opposition to Plaintiff's Motion for Remand¹ and in support of this Motion, Plaintiff's Complaint does not allege a single cause of action against the Nominal Parties, nor is any relief sought from them.

To determine whether a defendant should be realigned as a plaintiff in evaluating diversity of citizenship on removal or remand, the question is whether that defendant's claims are more

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closely aligned with the plaintiff's claims, or with the defendants' claims. *Aegis Services, Inc. v. Trans Healthcare, Inc.*, Case No. 2:04-CV-1175, 2005 U.S. Dist. LEXIS 12072, at *9 (S.D. Ohio June 17, 2005). Courts thus look to the “principal purpose” of the suit, and the “primary or controlling matter in the dispute” when determining how the parties should be aligned. *United States Fidelity & Guaranty Co. v. Thomas Solvent Co.*, 955 F.2d 1085, 1090 (6th Cir. 1992). “Despite the fact that there may be actual and substantial ancillary or secondary issues to the primary issue, the parties should be aligned in accordance with the primary issue in an action.” *Id.* at 1089.

Here, the Plaintiff's primary claim is to abate an alleged nuisance and enjoining the parties from maintaining similar nuisances in the future. Some of the Nominal Parties were named by Plaintiff because they have a lien interest in the property that is the subject of Plaintiff's Complaint.² The remaining Nominal Parties have no interest in the property at issue and were fraudulently joined to defeat diversity.³ No claims, let alone claims concerning Plaintiff's primary purpose have been made against any of the Nominal Parties. The Nominal Parties have no stake in the primary purpose of Plaintiff's complaint. Since no dispute exists between Plaintiff and the Nominal Parties, they should be realigned as Plaintiffs or nominal parties and disregarded for the purposes of determining diversity of citizenship. *Mortenson Family Dental Center, Inc. v. Heartland Dental Care, Inc.*, 526 Fed.Appx. 506, 508 (6th Cir. 2013); *Deltro Electric Ltd. v. Electric Power Systems International, Inc.*, 2021 WL 5027406 (S.D. Ohio 2021).

² Metropolitan Commercial Bank, Marbelle Industries, Inc. B&H Coin Laundry Service, Brent Delewski, K Kern Painting, LLC, AAA Staffing, LLC and Cuyahoga County Treasurer

³ State of Ohio Department of Taxation, Attorney General of The State of Ohio, Ohio Bureau of Workers Compensation and Ohio Department of Job & Family Services.

Respectfully submitted,

/S/ Grant J. Keating .
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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2023, the foregoing Removal Defendants' Joint Motion For Realignment of Parties, was filed via this Court's electronic filing system and that copies of same were served upon all unrepresented parties via regular U.S. Mail at the addresses listed in the Complaint.

Respectfully submitted,

/S/ Grant J. Keating .
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